

REMARKS

This Reply is in reply to the Office Action mailed September 4, 2008. Claims 7, 9-16, 20-24, 26-56, 58-64, and 66-85 were pending in the application. Claims 26-56, 58-64, 66-69, 77, and 83-85 were allowed. Claims 70-76 and 78-81 were withdrawn from consideration. Claims 7, 9-16, 20-24, and 82 were rejected.

Claim 7 was rejected under 35 USC 112, second paragraph. The limitation cited as being unclear in the Office Action has been deleted. The claim has also been amended to now include, *inter alia*, that the brace and base are connected together "with the enlarged first end positioned to contact the inferior surface of the spinous process of the L5 vertebra during extension of the spine." This claim was previously rejected under 35 USC 102(b) as being anticipated by US Patent No. 5,415,659 (hereinafter Lee). Lee does not disclose that an enlarged first end of the brace with a thickness that is greater than the second end of the brace is positioned to contact the inferior surface of the spinous process of the L5 vertebra during extension of the spine. Lee discloses an elongated plate and intermediate member positioned on a lateral side of the spinous process.

Claims 9, 12-16, and 20-24 were rejected under 35 USC 102(e) as being anticipated by US Patent Application No. 2002/0029039. Claim 9 has been amended to now include, *inter alia*, that a device can secure the brace to the body "in a position with the distal end located outward from the body to contact the inferior surface of the spinous process of the L5 vertebra during extension of the spine." For at least this reason, independent claim 9 and dependent claims 12-16 and 20-24 are not anticipated and are in condition for allowance.

Claims 9, 13-16, 20-24, and 82 were rejected under 35 USC 102(b) as being anticipated by Lee. The Office Action on page five includes a marked-up version of Figure 8 of Lee that illustrates an interpretation of how Lee meets the claim elements of claim 9. Claim 9 has been amended as stated above. Lee does not disclose a device that can secure the brace to the

body in a position with the distal end of the brace located outward from the body to contact the inferior surface of the spinous process of the L5 vertebra during extension of the spine. Lee discloses an elongated member positioned on the lateral side of the spinous process. For at least this reason, independent claim 9 and dependent claims 13-16, 20-24, and 82 are not anticipated and are in condition for allowance.

Claims 10-12 were rejected under 35 USC 103(a) as being unpatentable over Lee. Claims 10-12 each depend from claim 9 and are not made obvious for at least the same reasons as independent claim 9.

Claims 10-11 were rejected under 35 USC 103(a) as being unpatentable over US Patent Application No. 2002/0029039. Claims 10 and 11 each depend from claim 9 and are not made obvious for at least the same reasons as independent claim 9.

In view of the above amendments and remarks, the Applicant submits the present application is in condition for allowance, and such action is respectfully requested.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.



David D. Kalish
Registration No.: 42,706

Dated: December 2, 2008

1400 Crescent Green, Suite 300
Cary, NC 27518
Telephone: (919) 854-1844
Facsimile: (919) 854-2084